Filed 4/22/02

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF RIVERSIDE et al., Petitioners, v. THE SUPERIOR COURT OF THE COUNTY OF RIVERSIDE, Respondent; RIVERSIDE SHERIFF'S ASSOCIATION, Real Party in Interest.	E030454 (Super.Ct.No. 361250) O P I N I O N

ORIGINAL PROCEEDINGS; petition for writ of mandate. Riverside Superior Court, Sharon J. Waters, Judge. Petition granted.

Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Steven L. Mayer, Kimberly A. Bliss; William C. Katzenstein, County Counsel, and Robert M. Pepper, Principal Deputy County Counsel, for Petitioners.

JoAnne Speers for League of California Cities' Legal Advocacy Committee Executive Committee as Amicus Curiae on behalf of Petitioners.

John J. Sansone, County Counsel, Diane Bardsley, Special Assistant County Counsel (San Diego), Kathleen Bales-Lange, County Counsel, and Teresa M. Saucedo, Deputy County Counsel (Tulare), for Counties as Amici Curiae on behalf of Petitioners.

Timothy A. Bittle for Howard Jarvis Taxpayers Association as Amicus Curiae on behalf of Petitioners.

No appearance for Respondent.

Olins, Foerster & Hayes and Dennis J. Hayes for Real Party in Interest.

Bill Lockyer, Attorney General, Manuel M. Medeiros, Senior Assistant Attorney General, Andrea Lynn Hoch, Lead Supervising Deputy Attorney General, Louis R. Mauro, Supervising Deputy Attorney General, and Christopher E. Krueger, Deputy Attorney General, for Bill Lockyer, Attorney General as Amicus Curiae on behalf of Real Party in Interest.

Silver, Hadden & Silver and Stephen H. Silver for Ventura County Deputy Sheriffs' Association as Amicus Curiae on behalf of Real Party in Interest.

Olson, Hagel, Waters & Fishburn, George Waters and Thomas E. Gauthier for Peace Officers Research Association of California and California Professional Firefighters as Amici Curiae on behalf of Real Party in Interest.

The superior court issued an order compelling the County of Riverside (County) to arbitrate unresolved compensation issues as provided by Senate Bill No. 402 (SB 402). SB 402, which went into effect on January 1, 2001, allows unions representing local public safety employees to demand binding arbitration of economic issues. In its petition for writ of mandate, the County asks this court to order the superior court to set aside its order

compelling arbitration and enter a new order denying the Riverside Sheriff's Association's (RSA) motion to compel arbitration. The County argues that SB 402 is invalid under article XI of the California Constitution[1] because it: (1) delegates to a private body the power to interfere with county money and perform a municipal function (§ 11, subd. (a)); and (2) impinges on the county's power to provide for the compensation of county employees (§ 1, subd. (b)). As described below, we grant the writ of mandate because SB 402 is invalid under both constitutional provisions.

STATEMENT OF FACTS

SB 402, entitled "Arbitration of Firefighter and Law Enforcement Officer Labor Disputes," added sections 1299 et seq. to the Code of Civil Procedure. SB 402 empowers unions representing public safety employees to declare an impasse in labor negotiations and require a local agency to submit unresolved economic issues to binding arbitration. Each party chooses an arbitrator, who together choose the third arbitrator. The panel then chooses, without alteration, between each side's last best offer, based on a designated list of factors. (Code Civ. Proc., §§ 1299.4, 1299.6.)

In May 2001, the County and RSA reached an impasse in negotiations over compensation for employees of the probation department. RSA requested that the dispute be submitted to arbitration under SB 402, but the County refused. RSA sought, and the superior court granted, an order compelling the County to submit the dispute to arbitration. In explaining its decision, the superior court said: "The matters at issue, to wit, the possible

[1] All further references are to article XI of the California Constitution unless

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disruption of law enforcement and firefighter services, are not matters of purely local concern but rather are of statewide concern. This statewide concern authorizes the Legislature to act . . . ."

DISCUSSION

1. *Section 11, Subdivision (a)*

Section 11, subdivision (a), provides that, "The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." SB 402 does delegate to a private body—the arbitration panel—the power to control or interfere with county money. This is because SB 402 empowers the panel to choose which compensation package, between the two last best offers, the county budget will have to fund. RSA argues that should the arbitration panel choose RSA's last best offer, the County can then opt to reduce staffing levels to keep compensation within the amount budgeted by the Riverside County Board of Supervisors. This is not a desired choice in the public safety arena. Further, this option would in fact be a consequence of the private arbitrators' interference with county money rather than a reason to declare that the interference does not exist. So, we accept the premise that SB 402 does violate section 11, subdivision (a)—*unless* the statewide concern

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otherwise indicated.

exception articulated in *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480 applies.[2] This is an issue of first impression in California.

In reviewing this statutory scheme, we are mindful of these instructions from the California Supreme Court. "'"[A]ll presumptions and intendments favor the validity of a statute . . . . Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears."'" (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780.) At the same time, "'. . . we must also enforce the provisions of our Constitution and "may not lightly disregard or blink at . . . a clear constitutional mandate." [Citation.]'" (*Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 569.)

A. *Local Employee Salaries are a Matter of Local Concern*

California law is quite clear that the determination of salaries paid to local employees is a local matter, not one of statewide concern. (See, e.g., *San Francisco Labor Council v. Regents of University of California* (1980) 26 Cal.3d, 785, 790 ["a prevailing wage requirement is not a matter of statewide concern"]; *Sonoma County Organization of*

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[2] "[O]ur cases have recognized 'that the section [11, subdivision (a),] was intended to prohibit only legislation *interfering with purely local matters . . . .*' Similarly, it has been held that section [11, subdivision (a),] does not forbid delegation of the power to tax [citations] . . . to accomplish purposes of *more than purely local concern*." (*People ex rel. Younger v. County of El Dorado, supra,* 5 Cal.3d at pp. 500-501, italics added.)

The state Constitution grants autonomy to charter cities as to "municipal affairs," but allows the state to regulate matters that are of "statewide concern." (§ 5, subd. (a); *Johnson v. Bradley* (1992) 4 Cal.4th 389.) Although Riverside County is not a charter city, we find that the numerous cases defining these two terms are analogous to what is and is not a "purely local matter" under *People ex rel. Younger v. County of El Dorado, supra*, 5 Cal.3d 480 for purposes of section 11, subdivision (a).

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Public Employees v. County of Sonoma (1979) 23 Cal.3d 296, 317 ["the determination of the wages paid to employees of charter cities as well as charter counties is a matter of local rather than statewide concern"].) The question then is whether the status of the employees as public safety personnel transforms the determination of their salaries into a matter of statewide concern. Because California courts have not yet answered this question, we must look at the case law concerning state intervention into labor relations generally between public safety personnel and local agencies.

B. *State Intervention in Local Public Safety Labor Relations*

One of the key cases cited by RSA is *Baggett v. Gates* (1982) 32 Cal.3d 128 (*Baggett*). In *Baggett*, police officers who were demoted petitioned for a writ of mandate, alleging that they had not been afforded an administrative appeal as required by the Public Safety Officers Procedural Bill of Rights Act (the Act). (Gov. Code, § 3300 et seq.) The city for whom the officers worked argued that the Act did not apply to charter cities because it violated the home rule provisions of the California Constitution. (§ 5.) *Baggett* contains some very convincing language about how the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. Specifically, *Baggett* talks about how the effects of labor unrest and strikes by police officers are felt beyond a city's borders,[3] which is a major point made by RSA and amici

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[3] "[I]t can hardly be disputed that the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. The

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curiae. This language initially appears to bolster RSA's position, but as explained below, the actual holding of *Baggett* stops well short of validating SB 402.

The California Supreme Court in *Baggett* goes out of its way to point out that "the act does not interfere with the setting of peace officers' compensation." (*Baggett, supra,* 32 Cal.3d. at p. 137.) Rather, the Supreme Court emphasizes that the Act "create[s] uniform fair labor practices throughout the state" and "secure[s] basic rights and protections to . . . public employees . . . ." (*Id.* at pp. 139-140.) The Supreme Court stops well short of endorsing state interference with local peace officer compensation, and implies that such interference would be much more serious than that necessary to ensure basic fair labor practices. Equally important, RSA cannot convincingly argue that having the power to compel arbitration of compensation issues is a "basic right" of public safety employees or that its absence is an unfair labor practice. Overall, then, despite its remarks about the multijurisdictional implications of unstable public safety employee labor relations, the California Supreme Court in *Baggett* declares only that ensuring fair labor practices and basic protections for public safety employees is a matter of statewide

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consequences of a breakdown in such relations are not confined to a city's borders. These employees provide an essential service. Its absence would create a clear and present threat not only to the health, safety and welfare of the citizens of the city, but also to the hundreds, if not thousands, of nonresidents who daily visit there. Its effect would also be felt by the many nonresident owners of property and businesses located within the city's borders. Our society is no longer a collection of insular local communities. Communities today are highly interdependent. The inevitable result is that labor unrest and strikes produce consequences which extend far beyond local boundaries." (*Bagget, supra*, 32 Cal.3d at pp. 139-140.)

concern; it is not authority that the compensation of these employees is a matter of statewide concern.

In a case prior to *Baggett*, the California Supreme Court differentiated between delegating individual grievances to an arbitrator and delegating "*general policymaking power*," including, specifically, the power to set compensation.[4] "The power to set the terms and conditions of public employment is broader and more intrusive upon the functions of city government than the arbitrator's authority in this case to resolve an individual grievance." (*Taylor v. Crane* (1979) 24 Cal.3d 442, 453.) Thus, the Supreme Court has on at least two occasions recognized the intrusiveness of interfering with local governments when they determine employee compensation.

Finally, we must distinguish another California Supreme Court case with language seemingly helpful to RSA's position. "We emphasize that there is a clear distinction between the *substance* of a public employee labor issue and the *procedure* by which it is resolved. Thus there is no question that 'salaries of local employees of a charter city constitute municipal affairs and are not subject to general laws.' [Citation.] *Nevertheless, the process by which salaries are fixed is obviously a matter of statewide concern* and none could, at this late stage, argue that a charter city need not meet and confer concerning its salary structure." (*People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 600-601, fn. 11, italics added second sentence (*Seal*

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[4] The court distinguished *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, which held that a general law city could not delegate to an arbitrator its own statutory duty to fix compensation for its employees.

Beach).) RSA points to this passage as indicating that because SB 402 establishes a *process* by which peace officer salaries are to be fixed (at the union's option), rather than establishing the salaries themselves or pegging them to a particular outside standard, SB 402 is saved by the statewide concern exception to section 11, subdivision (a). However, as in *Baggett*, the issue considered in *Seal Beach* (whether the Legislature can require local agencies to meet and confer in good faith with employee representatives over wages and other issues) is described by the Supreme Court as a basic "fair labor practice." (*Seal Beach, supra,* at p. 600.) In other words, it is a matter of statewide concern that the process by which local agency employee salaries are set is conducted according to fair labor practices. Again, empowering public safety unions to force local agencies to submit salary disputes to binding arbitration is certainly not necessary to ensure basic fair labor practices, without which the unions cannot fairly participate in the bargaining process. Thus, the language in the *Seal Beach* footnote does not apply to the matter at hand.

C. *Public Safety Strikes are Illegal*

RSA and amici curiae argue that peace officer compensation is a matter of statewide concern, citing *Baggett* and others, because labor unrest in one local jurisdiction can have regional or statewide effects. While it is true that a strike by deputy sheriffs of Riverside County would undoubtedly affect other jurisdictions,[5] respondents, amici curiae, and the Legislature ignore the simple fact that strikes and other work stoppages by public safety

[5] Other affected jurisdictions would include cities who have contracted with the County for police services, as well as other cities, counties, or the state whose law enforcement personnel may be called upon to fill the gap created by striking deputies.

personnel are illegal.[6] The Legislature is obviously concerned that the public safety and welfare are endangered by such work stoppages, and perhaps rightly so. However, this concern does not allow the Legislature to bestow upon public safety employees a collective bargaining weapon that violates the state Constitution's protection against private body interference in the financial affairs of local agencies. Rather, the Legislature may consider, among other options, increasing enforcement of existing antistrike laws, or having bargaining impasses resolved by arbitrators chosen by and responsible to public officials.

D. *Doubt Regarding Public Welfare Threat*

The Legislature included in SB 402 the recitals that "strikes taken by firefighters and law enforcement officers against public employers are a matter of statewide concern" and that its intent in enacting the statute was to provide "impasse remedies necessary to afford public employers the opportunity to safely alleviate the effects of labor strife *that would otherwise lead to strikes by firefighters and law enforcement officers."* (Code Civ. Proc., § 1299, italics added.) While the courts give "great weight" to such pronouncements by the Legislature regarding what is a matter of statewide concern, "the fact that the Legislature has chosen to deal with a problem on a statewide basis is not determinative of

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[6] Strikes by firefighters are made illegal by statute. (Lab. Code, § 1962.) Work stoppages by police officers, including strikes and "sick-outs" are per se illegal. (*City of Santa Ana v. Santa Ana Police Benevolent Assn.* (1989) 207 Cal.App.3d 1568, 1572.) SB 402 itself prohibits strikes by firefighters and law enforcement officers that endanger public safety. (Code Civ. Proc., § 1299.4, subd. (d).)

whether the statute relates to a statewide concern." (*Sonoma County Organization of Public Employees v. County of Sonoma, supra*, 23 Cal.3d at p. 316.)

Even aside from the illegality of strikes by public safety personnel, there is no evidence in this record that illegal strikes by public safety employees have posed such a grave threat to public safety to justify SB 402's infringement on the local autonomy granted by the state Constitution. The Legislature's statement somewhat to the contrary ("strikes taken by firefighters and law enforcement officers against public employers . . . are a predictable consequence of labor strife and poor morale that is often the outgrowth of substandard wages and benefits, and are not in the public interest") does not make it so. (Code Civ. Proc., § 1299.) As the County points out, both the state and hundreds of cities and counties have existed for decades without binding interest arbitration. There is simply no evidence in this record that illegal public safety work stoppages have posed, or could in the future pose, an actual danger to the public safety or welfare.

E. *Why Not Empower State Law Enforcement?*

Further, the validity of the Legislature's findings to the effect that the public welfare is endangered statewide because public safety personnel cannot compel their employers to arbitrate economic issues (Code Civ. Proc., § 1299) is undermined by the Legislature's refusal to empower the state's own public safety personnel to compel it to arbitrate such disputes. As we independently assess whether illegal strikes by public safety personnel are a matter of statewide concern that justifies compelled arbitration, this court does consider the Legislature's lack of concern for public safety when the remedy would entail empowering a private body to interfere with the state's budget.

2. *SB 402 is Unconstitutional Under Section 1, Subdivision (b)*

Even if SB 402 did not run afoul of section 11, subdivision (a), SB 402 is unconstitutional when applied to counties under section 1, subdivision (b).

A. *No "Statewide Concern" Exception*

Section 1, subdivision (b), states that, "[T]he governing body [of a county] shall provide for the number, compensation, tenure, and appointment of employees." Unlike section 11, subdivision (a), the courts have not carved out an exception for matters of statewide concern. Thus, we need only turn to the statute itself and its legislative history to decide whether SB 402 violates section 1, subdivision (b), by allowing an arbitration panel to determine the compensation of county public safety employees.

B. *Statutory Construction and Legislative History*

The state Constitution gives the county board of supervisors the exclusive authority to "provide for the . . . compensation . . . of employees." SB 402 allows a private arbitration panel to determine the compensation of county employees by choosing between the last best offers of the union and the county. Unless these two seemingly contradictory schemes can be reconciled, then SB 402 runs afoul of section 1, subdivision (b).

The precursor to section 1, subdivision (b), was added to the California Constitution in 1933 as an amendment to section 5. At that time, the provision was amended to read, "[T]he board of supervisors in the respective counties shall regulate the compensation of all officers in said counties . . . and shall *regulate*[7] the number, method of appointment, terms

[7] "Regulate" was changed to "provide" in the 1970 amendments.

of office or employment, and compensation of all deputies, assistants, and employees of the counties." (Italics added.) In 1970 the state Constitution was reorganized and this provision was renumbered and reworded, explicitly *without substantive change*.[8] This is important because RSA and amici curiae point to the 1967 and 1968 discussions before the Legislature's Constitution Revision Commission to support their argument that to "provide for" compensation means only to authorize or pay, but not set or determine. Because the 1970 amendments to section 1, subdivision (b), including changing "regulate" to "provide," are expressly not substantive, we must look instead to the legislative history of the 1933 amendments to construe this provision.

The ballot argument in favor of the 1933 amendment (put to the voters as Proposition 8) informs the voters that, "This is a county home rule measure, giving the county board of supervisors . . . complete authority over the number, method of appointment, terms of office and employment, and compensation of all . . . employees." Thus, when the voters approved Proposition 8, they intended to give the counties "complete authority" over employee compensation. Empowering an employee's union to place this decision in the hands of a private arbitration panel, even given the factors the panel is

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[8] Section 13 also adopted in 1970, expressly states, "The provisions of Sections 1 [subdivision] (b) (except for the second sentence) . . . of this Article relating to matters affecting the distribution of powers between the Legislature and cities and counties . . . shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to the effective date of this amendment, and as *making no substantive change*." (Italics added.)

required to consider, takes away this complete authority and thus conflicts with section 1, subdivision (b).

Finally, the California Supreme Court has recognized that the purpose of the 1933 amendment was to "give greater local autonomy to the setting of salaries for county officers and employees, removing that function from the centralized control of the Legislature." (*Voters for Responsible Retirement v. Board of Supervisors, supra,* 8 Cal.4th at p. 772.) Further, "[t]he 1933 amendment transferred control over the compensation of most county employees and officers from the Legislature to the boards of supervisors." (*Id.* at p. 774.) SB 402 removes from local jurisdictions, at the option of public safety unions, the authority to set the compensation of public safety employees that is expressly given to them by section 1, subdivision (b). This clearly violates section 1, subdivision (b).

CONCLUSION AND DISPOSITION

SB 402 violates both section 11, subdivision (a), and section 1, subdivision (b), of the state Constitution.

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to set aside its order compelling arbitration and enter a new order denying RSA's motion to compel arbitration.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

CERTIFIED FOR PUBLICATION

/s/ Richli
J.

We concur:

/s/ McKinster
Acting P.J.

/s/ Gaut
J.